

THIS INSTRUMENT PREPARED BY AND RETURN TO:  
Emily G. Pierce, Esq.  
Rogers Towers, P.A.  
1301 Riverplace Blvd, Suite 1500  
Jacksonville, Florida 32207

**MASTER PLAN DEVELOPMENT AGREEMENT**  
(Reserve at Haw Creek)

THIS MASTER PLAN DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between **NORTHEAST FLORIDA DEVELOPERS LLC**, a Florida limited liability company (“**Developer**”), and **CITY OF BUNNELL, FLORIDA**, a political subdivision of the State of Florida (the “**City**”; Developer and City may be collectively referred to as the “**Parties**”), as joined in by **JM PROPERTIES X, LLC**, a Florida limited liability company (the “**Owner**”).

**WHEREAS**, the Owner owns the fee simple title to certain real property consisting of approximately 2,787 +/- acres located west of U.S. Highway 1 between State Highway 100 West and State Road 100, in the City of Bunnell, Florida, as more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Property**”);

**WHEREAS**, Developer is the contract purchaser of the Property and requests approval for a Master Plan Development to allow development of the Reserve at Haw Creek community on the Property for a maximum of 8,000 residential units, 440,000 square feet of commercial, retail, and office uses, 800 recreational vehicle sites, 775,000 square feet of industrial uses, and certain public service uses (the “**Development**”), subject to the conditions set forth in this Agreement;

**WHEREAS**, the Owner and Developer are in voluntary agreement with the conditions, terms, and restrictions hereinafter recited, and the Owner has voluntarily agreed to their imposition as an incident to development of the Property;

**WHEREAS**, the City Commission finds that this Agreement is consistent with the City’s 2035 Comprehensive Plan (the “**Comprehensive Plan**”) and Land Development Code (the “**LDC**”), and that the conditions, terms, restrictions, and requirements set forth herein are necessary for the protection of the public health, safety, and welfare of the citizens of the City;

**WHEREAS**, the Florida Local Government Development Agreement Act, Sections 163.3220 through 163.3243, Florida Statutes (the “**Act**”), authorizes a local government to enter into a development agreement with a developer to provide assurances to a developer that upon receipt of a development permit a developer may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, in order to strengthen the public planning process, to encourage sound capital improvement planning and financing, to assist in assuring there are adequate capital facilities for a development, to encourage the private participation in comprehensive planning, and to reduce the economic costs of development;

**WHEREAS**, the Act authorizes agreements for up to thirty (30) years, which can be extended by mutual consent of the parties, subject to the public hearing requirements in accordance

with Section 163.3225, Florida Statutes;

**WHEREAS**, a development agreement adopted pursuant to the Act encourages a stronger commitment to comprehensive and capital facilities planning, ensures the provision of adequate public facilities for development, encourages the efficient use of resources and reduces the economic costs of development; and

**WHEREAS**, the City Commission finds that this Agreement is consistent with the exercise of the City's powers under the Municipal Home Rule Powers Act; Article VIII, Section 2(b) of the Constitution of the State of Florida; Chapter 166, Florida Statutes; the City of Bunnell Charter, and other applicable law, and the City's police powers, and serves a public purpose;

**WHEREAS**, the City has determined that the requirements of Section 163.3231, Florida Statutes, have been met in that:

- i. The City has adopted a local Comprehensive Plan that is in compliance;
- ii. The proposed development of the Property is consistent with the Comprehensive Plan, including the Future Land Use Map, and complies with applicable provisions of the LDC;
- iii. This Agreement constitutes a binding commitment on the part of Developer, its successors and assigns, to develop the Property consistent with the Comprehensive Plan and applicable provisions of the LDC; and
- iv. This Agreement strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation and comprehensive planning and reduces the costs of development;

**WHEREAS**, the City finds that it is in the best interest of the public to enter into this Agreement with Developer to establish the responsibilities between the parties for the various improvements associated with the construction of Reserve at Haw Creek; and

**WHEREAS**, this Agreement constitutes a binding commitment on the part of Developer, its successors and assigns, to develop the Property consistent with the Comprehensive Plan and applicable provisions of the Code.

**NOW THEREFORE**, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Recitals; Findings of Fact.** The Recitals set forth above are true and correct and are incorporated herein by reference as Findings of Fact.
2. **Purpose and Intent.** Developer and the City desire to enter into this Agreement to address their respective responsibilities for both on-site and off-site improvements related to the

Development and to work cooperatively with each other to ensure that the Reserve at Haw Creek is developed in such a way as to benefit both Developer and the City. The Parties intend to utilize this Agreement to identify the methodology to be used for allocating costs for the potable water system, the sanitary sewer system, the stormwater system, and the transportation system. In addition, the Agreement identifies the available credits to Developer, the potential for future credits, and the City's share of financial responsibility for the improvements that may benefit the City's overall utility, stormwater, and transportation systems beyond that needed for this Development. The Parties do not intend to vest the Development to current land development regulations, and Developer or its successors and assigns will be required to meet all applicable codes at the time individual development orders or permits are sought.

3. **Public Facility Improvements.** The City will provide water and sanitary sewer services to the Property pursuant to separate utility agreements between the City and Developer. Developer agrees that Developer or the builder of each lot, as it is developed, within the Property, shall pay the water/sewer connection/tap costs/fees for lots, units or structures within the project at the time of issuance of a building permit for the particular improvement. Developer agrees that Developer or the builder of each lot, as it is developed, within the Property, shall abide by all applicable federal, state and local codes, design, permitting and construction standards, requirements, policies, rules and regulations for civil site plan, utilities, stormwater and buildings. In addition, the Parties agree to the following utility and infrastructure improvements:

A. **Potable Water System.**

- (i) In furtherance of the public/private partnership established through this Agreement, prior to occupancy of the first unit, Developer in coordination with the City shall design, engineer, and construct a potable water plant generally located on the Property as depicted in **Exhibit "B"**, or in a location otherwise mutually agreed to by the Parties (the "**City's Potable Water Plant**"). The City's Potable Water Plant shall be constructed with sufficient capacity to serve each phase of Development as further contemplated herein. The Parties shall agree upon the anticipated level of service required to serve the Development with adequate potable water service. Developer may elect to construct the City's Potable Water Plant in its entirety or to construct the plant in phases, at Developer's sole discretion. However, Developer understands and agrees that the City shall not issue a Certificate of Occupancy for a residential use or a **Certificate of Use** for a non-residential use for any new building until such time as Developer demonstrates that adequate potable water service is fully in place to serve the subject building.
- (ii) Following completion of the City's Potable Water Plant, Developer shall convey the plant, piping to the plant and the underlying real property on which the plant is located to the City. Developer shall receive dollar-for-dollar water impact fee credit, proportionate share fee credits or similar capital facilities improvement credit equal to the actual cost of designing, planning, engineering, permitting, and constructing the City's Potable

Water Plant. The City agrees that Developer's contribution of the City's Potable Water Plant will be the only connection charge to be imposed by the City for potable water serving the Development.

- (iii) Developer shall comply with all codes, laws, and regulations necessary for the development of the Property applicable at the time each development permit is issued and, subject to the credit provision above, will pay all usual and customary costs associated with providing potable water on-site to the Property for its intended uses.
- (iv) Developer agrees to provide to the City any necessary easements on, under and across the Property for the operation and maintenance of the City's Potable Water Plant.
- (v) Developer shall be permitted to implement an initial potable water system and temporarily connect to the City's existing water system for the first phase of the Development of up to 100,000 gallons per day without a Consumptive Use Permit. Such temporary capacity needed shall be coordinated between Developer and the City's Public Works Department.

B. Sanitary Sewer System.

- (i) In furtherance of the public/private partnership established through this Agreement, Developer agrees to purchase, and the City agrees to sell, a minimum of 200,000 gallons and a maximum of 300,000 gallons of sanitary sewer capacity at a cost of Twenty dollars (\$20.00) per gallon from the City's sanitary sewer treatment plant located at [REDACTED] (the "City's Sanitary Sewer Treatment Plant"). In connection with this purchase Developer hereby agrees to purchase a minimum of 100,000 gallons of sanitary sewer capacity on or before December 31, 2027. Any additional sanitary sewer capacity available to Developer will be purchased by Developer at a newly negotiated rate.
- (ii) Developer agrees to design, plan, engineer and construct any and all necessary improvements or expansions needed for the City's Sanitary Treatment Plant, and agrees to be co-applicant with the City on any necessary permitting, in order to provide sufficient capacity to serve the Development.
  - 1. Any improvements or expansions will be dedicated by Developer to the City upon completion.
  - 2. At such time as any improvements or expansions made to the City's Sanitary Treatment Plant require additional land, Developer agrees, at Developer's expense, to relocate the City's existing maintenance yard which is currently adjacent to the City's Sanitary Treatment

Plant to property within the Development.

- (a) Developer, in coordination with the City, shall design, plan, engineer, permit and construct the new maintenance yard. All aspects of the design, engineering and permitting processes shall be mutually agreeable by Developer and the City. Developer and the City shall be co-applicants on any permitting application.
  - (b) Developer is hereby authorized to apply, in the name of the City, for any grants or other funding that may be available for any improvements or expansions to the City's Sanitary Sewer Treatment Plant.
3. The Parties agree that any improvements or expansions to the City's Sanitary Sewer Treatment Plant under this Agreement will be designed and are anticipated to solely serve the Development. Should additional capacity be required by the City to serve property outside of the Development, the Parties agree to negotiate in good faith the terms related to any such improvements or expansions.
4. The City agrees to provide Developer, its agents and employees, with access to the City's Sanitary Sewer Treatment Plant and any related engineering, planning or architectural drawings related to same, in order to design, plan, permit and construct any improvements or expansions prior to dedication to the City. If multiple improvements or expansions are done, the City agrees to provide such access for each phase of the project.
- (iii) Should Developer determine that the Development will not require the full 300,000 gallons of sanitary sewer capacity, Developer will provide notice to the City of this decision pursuant to the Notice provisions set forth in Section 22 below at which time the City shall no longer be obligated to provide additional capacity at the agreed upon Twenty dollars (\$20.00) per gallon rate.
  - (iv) Should Developer determine that the Development will require additional sanitary sewer capacity beyond 300,000 gallons, Developer will provide notice to the City of this decision pursuant to the Notice provision set forth in Section 22 below at which time the City through the City's Public Works Department agrees to consider any such request with the cost of any additional capacity being negotiated by the Parties. However, the City is under no obligation to provide Developer with additional sanitary sewer capacity beyond 300,000 gallons.
  - (v) Developer understands and agrees that the City shall not issue a Certificate

of Occupancy for a residential use or a **Certificate of Use** for a non-residential use for any new building until such time as Developer demonstrates that adequate sanitary sewer capacity is available to serve the subject building.

- (vi) Developer shall receive dollar-for-dollar sewer impact fee credit, proportionate share credit or similar sewer facility credit equal to any payments made by Developer for sanitary sewer capacity, including but not limited to, all costs incurred by Developer for the relocation of the City's maintenance yard.
- (vii) The City shall retain ownership of, and shall operate and maintain, the City's Sanitary Sewer Treatment Plant and shall have the right to collect all usage fees on a monthly basis from all users. The City shall be responsible for operation and maintenance of any improvements or expansions to the City's Sanitary Sewer Treatment Plant following the dedication and acceptance of same.
- (viii) The City is responsible for any required amendments to its Capital Improvement Plan, Comprehensive Plan Infrastructure Element, or similar document and shall be responsible for any required reporting requirements following the dedication and acceptance of any improvements or expansions to the City's Sanitary Sewer Treatment Plant.
- (ix) Developer understands that Developer is responsible for all costs associated with the design, planning, permitting and construction of main trunk line implementation, on-site lift stations, and neighborhood distribution systems related to the Development in compliance with applicable City regulations.
- (x) Developer shall comply with all codes, laws and regulations necessary for the development of the Property applicable at the time each development permit is issued.
- (xi) Developer agrees to provide to the City any necessary easements on, under and across the Property for the construction, operation and maintenance of the sanitary sewer system.

C. Stormwater System.

- (i) Developer shall comply with all codes, laws and regulations necessary for the development of the Property applicable at the time each development permit is issued and will pay all usual and customary costs associated with providing stormwater capture, retention and treatment on-site to the Property for its intended uses.
- (ii) Developer agrees to provide to the City any necessary easements on, under

and across the Property for the construction, operation and maintenance of the stormwater system.

D. Reuse/Reclaimed Water.

- (i) The City shall reasonably endeavor to make reclaimed water available to the Development sufficient to serve each phase of the Development as reclaimed water is needed. The City warrants that the reclaimed water delivered to the Development shall meet or exceed the minimum quality standards for public access reclaimed water use as set forth under applicable state, federal and local regulatory agencies having jurisdiction over wastewater collection and the treatment and distribution of reclaimed water. The City does not warrant or represent the availability of a specific quantity of reclaimed water, nor does the City warrant that reclaimed water pressure at the point of delivery to Developer's on-site system will be adequate for direct connection to Developer's on-site system.
- (ii) Developer shall be responsible for the design, permitting, ownership, operation, repair, maintenance and replacement of all transmission, storage, and other facilities within the Development for the provision of reclaimed water to Developer's on-site system as needed to serve each phase. Unless otherwise dedicated to and accepted by the City, Developer's on-site system shall be owned, designed, permitted, operated and maintained in compliance with all applicable state, federal and local regulations by Developer, its agents and employees, or a duly formed Community Development District ("CDD") or Homeowners/Property Owners' Association ("HOA").
- (iii) Developer agrees to take all reasonable precautions, including the use of signs and appropriate labels, to clearly identify the reclaimed water source and supply system in compliance with all applicable state, federal and local regulations.
- (iv) Developer agrees to pay all usual and customary costs associated with providing reclaimed water service to the Property for its intended uses.
- (v) Developer agrees to provide to the City any necessary easements on, under and across the Property for the operation and maintenance of all reclaimed water flow meters, control devices, transmission mains and/or other appurtenances thereto installed or owned by the City.

E. Parks/Open Space. Concurrent with development of the Property or phases thereof, Developer will provide parks and open space as outlined by applicable provisions of the Planned Unit Development ordinance, as amended from time to time (the "PUD"), governing development of the Property.

- F. Cooperation; Funding. In furtherance of the public/private partnership established through this Agreement and unless otherwise stated above, the Parties agree to be co-applicants on all permits and approvals required for the public facility improvements contemplated to be designed, engineered, and constructed by Developer under this Section 3. The City shall use its best efforts to cooperate with and assist Developer in timely securing all permits and approvals required and necessary for the implementation of said improvements. Developer agrees that all design of the public facility improvements under this Section 3 shall conform to applicable requirements of the permitting agencies including, without limitation, the City. Developer shall be allowed to utilize the City's status to apply and obtain grant funds to offset the costs of the public infrastructure and facilities and eligible private improvements, if any, and the City shall cooperate with Developer in seeking all applicable grant funds that may be available.
4. Transportation/Mobility Improvements. In addition to the public facility improvements provided for in Section 3 of this Agreement, Developer and the City will cooperate in providing the following transportation and mobility improvements related to the Development:
- A. Improvements to City Transportation Facilities. In coordination with the City, Developer shall retain the services of a licensed traffic engineer to conduct one or more traffic studies that analyze impacts to adjacent roadways related to each phase of development. Developer and the City shall mutually agree on the methodology to be used prior to commencement of each study. Based upon the results of the traffic studies Developer shall design, plan, engineer, permit and construct all necessary off-site transportation improvements related to any City Roads impacted to a failing level of service as a result of this development, with the timing of said improvements to be determined by the City. Should the traffic studies identify improvements needed on transportation facilities not owned by the City, Developer agrees to coordinate and work directly with the owner(s) of said facilities.
- B. Deen Road. In furtherance of the public/private partnership established through this Agreement and in addition to any other requirements for improvements to City roads as determined under Section 4A above, the City shall be making certain improvements to Deen Road, with the City and Developer splitting all costs related to the design, planning, engineering, permitting and construction of said improvements equally between the Parties. The timing of said improvements will be determined by the City.
- C. Tolman Street. Likewise, in furtherance of the public/private partnership established through this Agreement and in addition to any other requirements for improvements to City roads as determined under Section 4A above, the City will be making certain improvements to Tolman Street, with the City and Developer splitting all costs related to the design, planning, engineering, permitting and construction of said improvements equally between the Parties. The timing of said improvements will be determined by the City.

- D. Additional Transportation Improvements. Developer, in consultation with the City, shall design, plan, engineer, permit and construct any transportation improvements needed within the City right-of-way as determined by the City in order for the City to access the relocated maintenance yard, the City's Sanitary Sewer Treatment Plant/Reuse Facility, and the City's Potable Water Plant.
- E. Development Access Points & Internal Transportation Improvements.
- (i) Developer shall be solely responsible for the design, planning, engineering, permitting and construction of any transportation or pedestrian improvements related to the following:
    - 1. Any and all primary, secondary and subordinate access points which directly abut the Development; and,
    - 2. Any internal roadways, sidewalks, pedestrian and bike trails, and similar transportation/mobility improvements that are internal to the Development.
  - (ii) The Bunnell City Commission shall determine no later than issuance by the City of the first horizontal development permit for the Development how the internal transportation/mobility improvements will be owned and maintained. The City Commission shall select one of the following options:
    - 1. All internal transportation improvements will remain privately owned and will be maintained by a duly established Municipal Service Benefit Unit (an "MSBU") or similar dependent or independent taxing improvement district or unit.
    - 2. All internal transportation improvements will remain privately owned and will be maintained by a duly established CDD.
    - 3. All internal transportation improvements will be dedicated to the City and will be maintained by the City.
    - 4. The Spine Road within the Development which is identified in the PUD documents as an eighty (80) foot wide right-of-way will be dedicated to the City and will be maintained by the City. All other internal transportation improvements will remain privately owned and will be maintained by an MSBU, a CDD or one or more HOAs.
  - (iii) Internal transportation improvements shall be designed in compliance with the PUD and with the City's construction standards. Where there is a conflict between the PUD standards and the City's standards, the PUD shall control.

(iv) Gates or controlled access facilities shall be permitted on internal roads within the Development as long as any such gates or controlled access facilities comply with the City's requirements for access by emergency services.

F. Ownership and Maintenance. Following the completion of any transportation improvement by Developer, including those to Deen Road, Tolman Street and any related to improvements needed by the City for access to its maintenance and treatment facilities, the City shall own and maintain those transportation facilities.

G. Impact Fee Credits. Developer shall be entitled to dollar-for-dollar transportation impact fee credit, mobility fee credit, proportionate share credit, or similar right-of-way facility improvement credit, for all monies spent and costs incurred by Developer in association with any transportation facility improvements required pursuant to Sections 4A, 4B, 4C, and 4D above. Developer acknowledges that no such credit is due for any transportation facility improvements required pursuant to Section 4E above.

5. Land and Equipment Contributions. In addition to the land contributions contemplated with the public facility improvements provided for in Sections 3 and 4 above, Developer and City will cooperate in providing the following land donations and equipment purchases:

A. Land Donation. Developer shall donate to the City a parcel of developable land within the Property of at least four (4) acres (the "**Public Safety Site**"), which shall be utilized by the City for public facilities such as the Bunnell Police Department, future fire/rescue services, or satellite City offices. Developer shall receive dollar-for-dollar development contribution or impact fee credits in accordance with City Ordinance No. 2020-06 and Section 163.31801, Florida Statutes (2024). Developer will work with the City on the location of the Public Safety Site.

B. Safety Contribution. Developer has agreed to make a public safety contribution to the City of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the "**Safety Contribution**"). Such Safety Contribution shall be made to the City prior to the City's issuance of the first (1st) residential certificate of occupancy within the Development. The City shall use the Safety Contribution to procure equipment and/or vehicles as the City deems necessary for public safety purposes. Developer shall receive dollar-for-dollar development contribution or impact fee credits in accordance with City Ordinance No. 2020-06 and Section 163.31801, Florida Statutes (2024) for the Safety Contribution.

C. Solid Waste Contribution. Developer has agreed to make a solid waste contribution to the City of up to Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) (the "**Solid Waste Contribution**"), which shall be made to the City prior to the City's issuance of the first (1st) residential certificate of occupancy within the Development. The City shall utilize the Solid Waste Contribution for (i) purchasing

one (1) waste collection vehicle compatible with the existing fleet of garbage trucks; or (ii) purchasing a nexus study to analyze and recommend solid waste assessment impact fees for said public service; or (iii) purchasing other solid waste equipment deemed necessary by the City and mutually agreed upon between the City and Developer to provide adequate solid waste public service to the Development. The City agrees that the Developer shall receive a credit of Five Hundred Thousand and No/100 Dollars (\$500,000.00) of the Solid Waste Contribution as a dollar-for-dollar development contribution or impact fee credit at the time any public service or solid waste assessment fee is implemented by the City and as provided for in Section 163.31801, Florida Statutes (2024).

- D. Additional Land Conveyances. To the extent additional land is conveyed and donated to the City for expansion of the City’s wastewater treatment plant or for the reclaimed water system, Developer shall receive dollar-for-dollar development contribution or impact fee credits in accordance with City Ordinance No. 2020-06 and as provided for in Section 163.31801, Florida Statutes (2024). Developer will work with the City on the location of said sites.

6. Affordable Housing. Developer agrees to set aside ten percent (10%) of the single-family residential units within the Development (the “**Affordable Units**”) as available for sale in fee to persons who qualify and receive assistance under Flagler County’s Local Housing Assistance Plan (the “**LHAP**”), or a similar program administered by Flagler County (“**Qualified Buyers**”). The determination as to whether a buyer meets the requirements of the LHAP program and is thus a Qualified Buyer shall be made solely by the Flagler County Department of Health and Human Services, or any such successor department. Multi-family residential rental units shall not be included in the ten percent (10%) set-aside.

- A. Location and Style. The Affordable Units shall be dispersed throughout the various neighborhoods within the Development and shall be constructed with the same architectural style and building standards as all other homes within the same neighborhood.

- B. The Restrictive Covenant. Developer shall record a restrictive covenant over each Affordable Unit which shall restrict the resale of the unit to Qualified Buyers for a period of thirty (30) years from the date of the first sale of such unit (the “**Restrictive Covenant**”).

- (i) The Restrictive Covenant shall be recorded in the Public Records of Flagler County, Florida prior to the first (1st) sale of any platted lot intended to include an Affordable Unit. The Restrictive Covenant shall be a covenant running with the title to and binding upon the real property including the Affordable Units and any transfer, conveyance, mortgage, or other encumbrance of any interest therein shall be expressly subject to and deemed to reference the Restrictive Covenant and its recorded data. Each time an Affordable Unit is sold, conveyed, or otherwise disposed of, the applicable lot shall be sold subject to the Restrictive Covenant. The City

shall have the right to enforce the Restrictive Covenant during the Restricted Period.

- (ii) Where an Affordable Unit or a lot set aside for an Affordable Unit remains unsold to a Qualified Buyer for a period of not less than twelve (12) months after being listed by a real estate agent, or as otherwise required by state or federal law, whether for first sale or resale, the Restrictive Covenant shall automatically be deemed null and void and such unit can subsequently be sold to any buyer from that point in time forward. Developer or its successor shall record a document in the Public Records of Flagler County, Florida acknowledging that the Restrictive Covenant is null and void as to that unit or shall otherwise revoke the Restrictive Covenant for that unit.

7. **City's Obligations.**

- A. **Permitting & Authorizations.** The City agrees to timely process all applications, permits, certificates of occupancy and other authorization requests submitted by or on behalf of Developer, its successors or assigns, in a reasonable manner, consistent with the Comprehensive Plan, the PUD Ordinance [REDACTED], as amended from time-to-time, and all applicable federal, state and local laws.
- B. **Permitting Fees.** Unless otherwise stated in this Agreement, the City agrees to waive all City permitting and review fees related to the design, planning, engineering, permitting and construction of any horizontal or vertical improvements associated with this Agreement, whether designed and constructed by Developer or a third party. This waiver does not include building permit fees for individual non-residential buildings, multi-family buildings or residential units.
- C. **License, Easement or Approval for Construction of Improvements.** The City hereby agrees to grant Developer any and all such licenses, easements, or similar documents needed in order to allow Developer to construct any public facility improvement contemplated under Section 3 of this Agreement upon City property, if applicable.
- D. **Operation, Maintenance & Ongoing Reporting/Certifications.** The City agrees that it is the City's sole responsibility to maintain and operate the services dedicated to it and maintain updated monitoring, certifications, inspections, and reporting as may be required and related to all potable water, sanitary sewer, reclaimed water, solid waste removal, and City owned transportation improvements following completion of construction and acceptance by the City of same under this Agreement.
- E. **Assurances to Developer.** Except as provided herein, as required by the PUD, and as required by federal, state and local laws, the City shall not impose any further conditions with regard to the development of the Reserve at Haw Creek.

F. Developer Impact Fee Credits. The City acknowledges that pursuant to Section 163.31801, Florida Statutes (2024), and Section 30-538, LDC, Developer is entitled to dollar-for-dollar credits against any impact fee imposed by the City for the donation of land or equipment, or the construction of capital facilities required pursuant to a development permit or made voluntarily in connection with capital facilities impact construction. The City and Developer will enter into an Developer Contribution Credit Agreement consistent with Section 163.31801, Florida Statutes (2024) and Section 30-538, LDC.

8. Necessity to Obtain Permits. Developer acknowledges its obligation to obtain all necessary federal, state and other local development permits (not mentioned herein) for development of the Property. The failure of this Agreement to address any particular permit, condition, term or restriction applicable to development of the Property shall not relieve Developer or any successors or assigns of the necessity of complying with federal, state and other local permitting requirements, conditions, terms or restrictions as may be applicable.

9. Agreement Consistent with Comprehensive Plan and Section 163.3180, Florida Statutes (2024). The City hereby acknowledges and agrees that (i) the Development is consistent with Florida Statutes and with the City's Comprehensive Plan and LDC, and (ii) that the City's Comprehensive Plan is in compliance with the State of Florida Comprehensive Plan.

10. Successors and Assigns. This Agreement runs with the Property, and the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. When Developer is used in this Agreement, it includes Developer and any successors and assigns owning any rights to the Property, which successors and assigns will jointly and severally assume all of Developer's obligations set out in the Agreement, unless the obligations have been fully discharged. Payments or credits due to by City pursuant to the terms of this Agreement will be disbursed or assigned to Developer, its successors and assigns in ownership of the Property. The obligations and entitlements of Developer may be assigned to one or more parties including, without limitation, developers, builders, property owners' associations, or to one or more community development districts, upon written notice to the City.

11. Applicable Law: Jurisdiction and Venue. This Agreement and the rights and obligations of the City and Developer under this Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida (2024). This Agreement may be enforced as provided in Section 163.3243, Florida Statutes, as may be amended from time to time. Venue for any litigation pertaining to the subject matter of this Agreement shall be exclusively in the circuit court of and for Flagler County, Florida. If any provision of this Agreement, or the application of this Agreement to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The fact that this Agreement does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the Development contemplated by this Agreement shall not relieve Developer or its successors in interest of the obligation to comply with the law governing such permit requirements, conditions, terms and restrictions. Notwithstanding the foregoing, the interests of

each party may be mortgaged in connection with a mortgage of any portion of the Property.

12. **Police Power and Sovereign Immunity Not Waived.** Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory authority and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its Sovereign immunity under the constitution and laws of the State of Florida.

13. **Joint Preparation.** Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

14. **Exhibits.** All exhibits attached to this Agreement contain additional terms of this Agreement and are incorporated into this Agreement by reference.

15. **Captions or Paragraph Headings.** Captions and paragraph headings contained in this Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope of intent of this Agreement, nor the intent of any provision of this Agreement.

16. **Counterparts.** This Agreement may be executed in counterparts, each constituting a duplicate original; such counterparts shall constitute one and the same Agreement.

17. **Effective Date and Recordation.** This Agreement shall become effective upon recording in the Public Records of Flagler County (the “**Effective Date**”).

18. **Entire Agreement.** This Agreement, including any such other agreements referenced herein and the attachments included hereto, embodies the entire understanding of the Parties with respect to the matters specifically enumerated herein, and all negotiations, representations, warranties and agreements made between the parties are merged herein. The making, execution and delivery of this Agreement by all parties have been induced by no representations, statements, warranties or agreements that are not expressed herein.

19. **Amendment.** This Agreement may be amended, cancelled or revoked consistent with the notice and hearing procedures of Section 163.3225, Florida Statutes, and the terms of Section 163.3237, Florida Statutes, as may be amended from time to time.

20. **Further Assurances.** Each party to this Agreement agrees to do, execute, acknowledges and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances in a manner and to the degree allowed by law, as shall be reasonably requested by the other party in order to carry out the intent of and give effect to this Agreement. Without in any manner limiting the specific rights and obligations set forth in this Agreement or illegally limiting or infringing upon the governmental authority of the City, the parties declare their intention to cooperate with each other in effecting the purposes of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

21. **Authority.** Each party represents and warrants to the other party that it has all

necessary power and authority to enter into and consummate the terms and conditions of this Agreement, and that all acts, approvals, procedures, and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be.

22. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when (a) hand delivered, or (b) delivered via Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) transmitted via email or facsimile, provided a copy is sent the next business day by method (a) or (b). Notices shall be deemed delivered on the date hand delivered or on the date shown on the receipt. Any notices or reports required by this Agreement shall be sent to the following:

For the City: City Administrator  
City of Bunnell  
604 E. Moody Blvd. Unit 6  
P.O. Box 756  
Bunnell, Florida 32110

With copy to: City Attorney  
City of Bunnell

\_\_\_\_\_  
\_\_\_\_\_

For Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

23. **Indemnification.** Subject to the limitations and provisions of Section 768.28, Florida Statutes, which limitations are not expanded, altered, or waived herein, the City hereby agrees to indemnify, defend and hold harmless Developer, its affiliated or related companies and its directors, officers, shareholders, members, employees, affiliates, assigns and successors (collectively the “**Indemnified Party**”), from any losses, claims, liabilities, demands, damages, expenses or causes of action (including reasonable costs of investigation and attorneys’ fees) incurred or sustained or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of the City contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of the City under this Agreement or under applicable law; (iii) any act, error or omission that results in a claim or enforcement action by any federal or state permitting agency; or (iv) any act, error or omission, or recklessness on the part of the City or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the City’s performance under this Agreement or relating to any and all improvements constructed or otherwise implemented as required by this Agreement, except to the extent caused by the gross negligence or intentionally

wrongful actions of Developer. The provisions set forth in this Section shall survive the termination of this Agreement.

24. **Severability.** If any provision of this Agreement, or its application to any person, entity or circumstances is specifically held to be invalid or unenforceable by a Court of competent jurisdiction, the remainder of this Agreement and the application of the provisions hereof to other persons, entities or circumstances shall not be affected thereby and, to that end, this Agreement shall continue to be enforced to the greatest extent possible consistent with the law and the public interest.

25. **Default and Remedies.**

- A. **Event of Default.** It shall be an event of default hereunder if either Party fails to perform its obligations hereunder or fails to abide by any of its promises and covenants hereunder (an “**Event of Default**”). Notwithstanding the foregoing, Developer’s failure to timely complete construction of any improvement shall not be deemed an Event of Default if Developer provides Performance Security (as hereinafter provided) and the City shall continue to issue any development permits required under this Agreement.
- B. **Notice, Cure.** No Event of Default as to any provision of this Agreement shall be claimed or charged by either Party against the other until notice thereof has been given to the defaulting Party in writing, and such default remains uncured for a period of sixty (60) days after such notice as determined by the non-defaulting Party.
- C. **Development Permits.** If Developer fails to timely cure an Event of Default as set forth in Section 24B above, and Developer elects not to post Performance Security as set forth in subparagraph D below, the City shall be entitled to cease issuance of building permits, certificates of occupancy, and similar development permits for any development within the PUD (“**Development Permits**”) until such time as the Event of Default is determined to be cured by the City or the default has otherwise been addressed pursuant to the remedies set forth in Section 24E below. This subparagraph does not entitle the City to revoke, nor will the City revoke, any validly issued Development Permit held by Developer, its successors and assigns, at the time of default. If Developer posts Performance Security pursuant to Section 24D below, the City shall continue to issue Development Permits for development within the PUD.
- D. **Performance Security.** Notwithstanding anything herein to the contrary, if Developer is unable to complete construction of any improvements needed to meet the required level of service for a proposed building, the City shall not issue a Certificate of Occupancy for a residential use or a **Certificate of Use** for a non-residential use for the building until such time as Developer demonstrates that adequate service is fully in place to serve the subject building.

E. Remedies.

- (i) **Mediation.** Should either party assert an Event of Default which remains uncured for more than sixty (60) days, the parties will attempt in good faith to resolve by mediation any controversy or claim arising out of or relating to such Event of Default prior to commencement of any litigation. If the parties are unable to agree upon a mediator to serve, the mediator shall be selected by the Chief Judge of the Circuit Court of the Seventh Judicial Circuit of the State of Florida upon application being made by either party. The mediation shall be set by the mediator. The mediation process shall be concluded within thirty (30) days after the mediator is selected unless the Parties both agree to an extended mediation time period.
- (ii) **Litigation.** If the parties are unable to resolve the controversy or claim through mediation, each Property shall have the right to pursue all available remedies at law or in equity, including, but not limited to the right to seek specific performance as to any provision of this Agreement.

26. **Advertising and Recording.** Developer will pay all costs related to providing notice and advertising this Agreement under Section 163.3225, Florida Statutes. Within fourteen (14) days after the execution of this Agreement by the parties, Developer and the City shall record a Memorandum of Agreement in the Public Records of Flagler County, Florida memorializing certain terms hereof, the cost of which recording shall be Developer's responsibility.

27. **Benefits to City.** The City hereby acknowledges and agrees that this Agreement substantially benefits the City in carrying out its objective to provide certainty in planning and schedule for capital improvements to provide facilities to meet the needs of the City residents and visitors.

28. **Force Majeure.** If the performance by either party or of any of its construction development obligations hereunder is delayed by acts of God, inclement weather, natural disaster, terrorist activity, health epidemics, pandemic strikes, labor disputes, war, civil commotion, accidents, industry-wide shortages of, or inability to obtain, labor or materials or any other event or condition beyond the reasonable control of such party ("**Force Majeure**"), then the party affected shall notify the other party in writing of the specific obligation delayed, and the duration of the delay, and the deadline for completion of such obligation shall be extended by a like number of days. Financial matters and payments, and performance of obligations of the parties not related to performing development work or making payments pursuant to this Agreement shall not be the subject of Force Majeure.

Passed and Duly adopted by the Board of City Commissioners of the City of Bunnell, Florida

this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_.

[Signatures on Following Pages]

WITNESSES:

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Print Name of Witness 1

\_\_\_\_\_  
Address of Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Print Name of Witness 2

\_\_\_\_\_  
Address of Witness 2

WITNESSES:

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Print Name of Witness 1

\_\_\_\_\_  
Address of Witness 1

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Print Name of Witness 2

\_\_\_\_\_  
Address of Witness 2

**JM PROPERTIES X, LLC, a Florida  
limited liability company  
[OWNER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[APPLICANT, IF DIFFERENT FROM  
OWNER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_